

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24

In the Matter of:

Frova Trucking, Inc.

Employer

and

Unión de Tronquistas de Puerto Rico,
Local 901, IBT

Petitioner

Case 24-RC-8478

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board, to determine whether a question concerning representation exists, and if so, to determine an appropriate unit for collective bargaining.¹

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

¹Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer has filed a brief which I have carefully considered in reaching my decision. At the Hearing, the Employer presented a Motion to Dismiss the Petition. For the reasons discussed hereinafter, the same is denied.
- b. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction. The Employer is a Puerto Rico corporation engaged in small package delivery at its facilities located in Ponce, Carolina and Aguadilla, Puerto Rico. During the past 12 month period, it has derived gross revenues in excess of \$50,000, from points and places located outside the Commonwealth of Puerto Rico.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

I. INTRODUCTION

The Employer, Frova Trucking, Inc. is a Puerto Rico corporation engaged in small package delivery. It maintains an administrative office located in Canóvanas and three company locations within the facilities of DHL in San Juan (Carolina)², Ponce and Aguadilla, Puerto Rico. The Unión de Tronquistas de Puerto Rico, Local 901, IBT, herein called the Petitioner, filed the instant Petition seeking to represent a unit of all full time and regular part-time truck drivers employed by the Employer at its San Juan (Carolina), Ponce and Aguadilla locations. There are approximately 17 employees in the unit petitioned for, of which 11 employees work at the Carolina location, 4 employees work at the Ponce location and 2 at the Aguadilla location. The Employer contends that there is no community of interest between the employees of the San Juan (Carolina), Ponce and Aguadilla locations such that an overall unit is not warranted. For the reasons discussed below, I find that the island-wide unit sought by the Petitioner, constitutes an appropriate unit for bargaining.

The Employer further contends that the instant petition should be dismissed because it seeks the representation of the same or substantially the same unit employees as the units set forth in two previous petitions withdrawn with prejudice. The Employer argues that the Petitioner failed to show good cause why the Region should entertain the new Petition before the end of the six-month prejudice period.³ The Petitioner argues, and I find, that the instant Petition is not similar to the previous petitions, which sought an election in separate units, at San Juan and Ponce, since the unit petitioned for includes the Aguadilla location employees and the Petitioner seek to represent the employees in an island-wide unit. Accordingly, the Motion to Dismiss is denied.

II. STATEMENT OF FACTS

The Employer's President, Roberto González, testified that the Employer has three operating stations or locations at Carolina, Ponce and Aguadilla, all within DHL⁴ facilities. Each location has its own Manager, who reports to the President. These Managers assign work to the drivers on a daily basis, insuring that the packages are delivered and picked up. In addition, each location has two Supervisors, who are in charge of the daily activities. Each driver is hired and trained to do a specific route within the location's geographical area. The drivers live near the stations where they work, report to their assigned locations in the morning, load the trucks with the packages to be delivered, register the packages in a computer system, and go on their

² Throughout the Hearing, Frova's President Roberto González referred to the San Juan location as the Carolina location. I take administrative notice of the Stipulated Election Agreement executed by the parties herein in Case 24-RC-8434 which sets forth the Employer's place of business as Carolina, not San Juan as it appears in the instant Petition. Accordingly, the reference to San Juan in the unit description has been changed to Carolina.

³ In Case 24-RC-8434, the Union petitioned the employees employed by the Employer at its Carolina location. A Stipulated Agreement was reached on March 14, 2005, but the Petition was later withdrawn, with prejudice, on April 11, 2005. Thereafter, on April 19, 2005 the Union filed a Petition to represent the employees employed at the Employer's Ponce location. On May 6, 2005 a Stipulated Agreement was reached between the parties. The Union subsequently requested to withdraw its Petition, and said request was approved on May 20, 2005, with prejudice to the filing of a new petition during a six-month period, in the absence of a finding that good cause existed warranting otherwise. The instant Petition includes both the Employer's Ponce and Carolina location employees along with the Aguadilla location employees.

⁴ Frova Trucking, Inc. has contracted the delivery of packages in the San Juan, Ponce and Aguadilla areas with DHL.

assigned routes. In Carolina, contrary to the Ponce and Aguadilla locations, the drivers also do package pick ups. A Dispatch person alerts a Carolina location driver if a package is to be picked up, and when the day's route is over, the packages are delivered to the station in order to be sent out in DHL's planes. At the end of the work day, all drivers return to their respective locations. Each location has its own separate truck and van fleet, and these are not shared with other locations.

González testified that approximately two and a half to three months ago an employee from the Carolina location was temporarily assigned a Ponce location route for two days because three employees from Ponce were absent from work on the very same day. This employee used to live in Ponce and knew that location's delivery routes. González stated that either himself or the Employer's Vice president Freddy Vázquez have done the routes if none of the employees available are familiar with the route. In addition, he testified that just recently, an employee from the Carolina location was sent to Aguadilla to cover the route of an employee who had resigned⁵. This employee covered the route temporarily while the vacancies were filled⁶. According to González, these were the only incidents of temporary interchange of employees between locations during the last year. González stated that two employees who load the trucks from DHL planes in San Juan (Carolina) do travel frequently to the Ponce and Aguadilla locations. González testified that either he or the Employer's VP Freddy Vázquez is responsible for the decision to transfer drivers between locations.

Regarding permanent transfers between locations, González testified that during the last five years, one driver has transferred permanently from one location to another, in order to be near his family and to avoid too many traveling expenses. This employee used to work at the Aguadilla location, quit, and was later rehired and assigned to the Carolina location, because no other vacancies were immediately available. Afterwards, he was voluntarily transferred to Aguadilla when a position became available.

In addition to the Carolina, Ponce and Aguadilla operating stations within DHL facilities, the Employer keeps an administrative office located in Canóvanas, Puerto Rico. González and Freddy Vázquez keep offices in Canóvanas. The Canóvanas office handles all administrative functions of operating a business and keeps all personnel files. If a job opening is available at either of the locations, the candidate is either interviewed by the supervisors or González at the Carolina location. The record evidence submitted does not show if either the supervisors or managers at each location make effective recommendations as to the hiring of a new employee. The wage rates for the drivers are the same at all three locations but individual wages vary according to each driver's experience, position and seniority. All drivers enjoy the same job related benefits, such as medical plan, sick leave and vacation time, and are subject to the same work rules. González testified that he frequently visits each of the locations. Additionally, the locations are geographically located approximately one hour and 45 minutes to two hours apart.⁷

⁵ There is no evidence regarding how many days this employee worked at Aguadilla.

⁶ Previously, the Employer was known as Airborne Express, and used to transport and deliver packages throughout the island of Puerto Rico. This employee has worked for the Employer since it was Airborne Express, and is familiar with the Employer's Aguadilla route.

⁷ The distance between locations was described in terms of driving time, not actual distance. I take administrative notice that the distance from Carolina to Ponce is approximately 73 miles, from Carolina to Aguadilla 90 miles, and that 63 miles separate Ponce from Aguadilla.

III. ANALYSIS

As stated above, the Petitioner seeks to represent all full time and part time truck drivers at each of the Employer's facilities in a single unit. The Employer contends that such a unit is not appropriate.

The Board determines whether a multi-location or single location is appropriate based on its evaluation of the community of interests among employees working at the different locations, including (1) similarity in employee skills, duties and working conditions; (2) functional integration of the business, including employee interchange; (3) centralized control of management and supervision; (4) geographical separation of facility and extent of union organization; and (5) employee choice. NLRB v. Carson Cable TV, 795 F.2d 879 (9th Cir. 1986). As the Petitioner seeks to represent a unit of employees on an employer-wide basis, I find that it is a unit which is, under well established Board principles, presumptively appropriate under the Act. See Greenhorne & O'Mara, Inc., 326 NLRB 514 (1998), Jackson's Liquors, 208 NLRB 807 (1974). It is therefore, the Employer's burden to establish that the petitioned for employer-wide unit is inappropriate.

Applying these principles, I conclude that there is a sufficient community of interest to warrant including the truck drivers at the Employer's three locations in an island-wide unit. Despite the geographical separation of these three facilities, and their separate immediate supervision, the function of each facility is the same; each location has similar distribution functions; the overall supervision is the same; the work and skills of the employees at each facility are essentially the same; there has been some interchange between employees and employees from the Carolina location have been assigned to cover absences in, and have frequent contact with those in Ponce and Aguadilla. Further, employee rules, payroll, personnel files and certain other functions are centrally located and/or controlled at the Canóvanas office; and, but for variations resulting from experience, position, and seniority, wages rates and employee fringe benefits at each of the locations are the same. There is no history of collective bargaining and no union seeks to represent the employees in a single location unit. Accordingly, I find that the petitioned for island-wide unit comprising the employees of the San Juan (Carolina), Ponce and Aguadilla locations constitute an appropriate unit, and find that the Employer has failed to sustain its burden of establishing that the employer-wide unit is inappropriate.

Accordingly, I shall direct that an election be held in the below described unit found appropriate herein:

IV. THE UNIT:

The following employees of the Employer constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full time and regular part time truck drivers employed by the Employer at its facilities in Carolina, Ponce and Aguadilla, Puerto Rico.

Excluded: All other employees, office clericals and professional employees, guards and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate herein. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Unión de Tronquistas de Puerto Rico, Local 901, IBT**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily lay off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) employees engaged in a strike who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *North Macon Health Care Facility*, 315 NLRB, 359, 361 (1994); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, such list must be received in the NLRB Region 24 Regional Office, La Torre de Plaza Suite 1002, 525 F.D. Roosevelt Ave., San Juan, Puerto Rico 00918-1002, on or before **September 16, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (787) 766-5478. Since the list will be made available to all parties to the election, please furnish a total of **three** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must

post the Notices to the Election provided by the Board in areas conspicuous to potential voters for a minimum of **three** working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least **five** full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so stops the employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, NW, Washington, D.C. 20570. This request must be received by the Board in Washington by **September 23, 2005**.⁸

Dated at San Juan, Puerto Rico, this 9th day of September 2005.



/s/ [Marta M. Figueroa]

Marta M. Figueroa
Regional Director, Region 24
National Labor Relations Board
La Torre de Plaza, Suite 1002
525 F.D. Roosevelt Avenue
San Juan, Puerto Rico 00918-1002

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⁸In accordance with section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

